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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 678

ALBERT TEITELBAUM,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO DISMISS AND/OR AFFIRM.

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TABLE OF AUTHORITIES CITED

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Appellee in the above entitled case moves to dismiss and/or affirm on the ground that the questions presented by the appellant are so unsubstantial as not to need further argument.

The appellant lists 19 questions presented by his appeal. Numbers 5, 6, 7, 8, 11, 12, 15 and 19, concern the claim that the appellant's confession should not have been admitted into evidence. The decision of the California District Court of Appeal (*People v. Teitelbaum*, 329 P. 2d 157, 173-174), adequately disposes of these contentions. (In point No. 11 appellant alleges that he was denied counsel at the time he made his confession. The evidence shows, however, that he had not asked for counsel until after he had made his confession.) [Rep. Tr. p. 1059.]

In points 1 and 2 the appellant argues that the word "claim" as contained in Insurance Code, Section 556, is so vague and uncertain as to violate due process. The District Court of Appeal's decision (*People v. Teitelbaum*, 329 P. 2d 157, 175-176) disposes of this contention.

In point No. 3 the appellant argues that he was convicted on "knowingly perjured testimony." There is nothing in the record to indicate that the testimony against the appellant was perjured testimony. There is certainly nothing in the record to indicate that any representative of the People of the State of California allowed perjured testimony to be used. This slur on the State officials is completely unfounded and frivolous.

In point No. 4 the appellant attacks the constitutionality of certain sections of the California Penal Code which refer to the indictment of a defendant on the ground that these sections allow insufficient notice to the defendant of the crimes with which he is charged. The appellant has not raised this point before, and even if he had raised it, it would not be valid. The appellant was indicted by a Grand Jury [Clk. Tr. pp. 1-3] and pursuant to California law he was furnished with a copy of the testimony of the Grand Jury hearing.

People v. Delhantie, 163 Cal. 461, 465.

The appellant was in possession of an indictment and extensive Grand Jury testimony. At no time during the trial or thereafter, did the appellant show that the transcript presented him did not allow him to prepare for trial, nor has he ever shown how he could have been prejudiced in the preparation of his defense.

In point No. 10 the appellant argues that the People of the State of California suppressed the defendant's use

of a witness by keeping said witness as a co-defendant. The defendant at no time attempted to call such witness. During the trial he stated that he did not wish to call him but only wished that the People would call him so that the defendant could cross-examine him. [Rep. Tr. p. 5A.] In addition, this witness was in fact a co-defendant (whose trial had been separated from that of the appellant by the *appellant's* request) and there was no showing that his arraignment was fraudulent in any way.

In point No. 13 the appellant argues that *Adamson v. California*, 332 U. S. 46, 91 L. Ed. 1903, should be re-examined. The appellee respectfully opposes this argument on the language of the *Adamson* case itself.

In point No. 14 the appellant argues that the District Attorney committed misconduct and that this misconduct resulted in a denial of due process. The California District Court of Appeal (*People v. Teitelbaum*, 329 P. 2d 157, 182-183) adequately answers this contention.

In point No. 16 the appellant argues that the selection of the Grand Jury violates due process. This point is well answered by the California District Court of Appeal. (*People v. Teitelbaum*, 329 P. 2d 157, 169-171.)

In point No. 18 the appellant argues that the denial of a new trial by the California Superior Court was a denial of due process. The appellant argues that he presented evidence unavailable at the trial to the effect that the appellant was convicted on perjured testimony. He does not in his statement present this evidence and we are at a loss to know the evidence to which he is referring. Of course, the Court has wide discretion in the granting or denying of a new trial. The appellant has not shown an abuse of such discretion and he has certainly not shown such abuse as would be necessary to violate due process.

In point No. 9 the appellant presents the broad question of whether the trial was fairly conducted. It is, of course, impossible to answer the general claim that a trial was not fairly conducted. We believe that the appellant has shown no instance in which his trial was unfairly conducted and has failed to show that he was denied due process of law.

Being that the appellant has failed to show a substantial question, we urge that this Honorable Court dismiss this appeal or affirm the State Court's decision on the ground that the questions presented by the appellant are so unsubstantial as not to need further argument.

Respectfully submitted,

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